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4 **BEFORE THE**  
5 **WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

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8 **IN THE MATTER OF**

No. UT-000883

9 QWEST CORPORATION PETITION FOR  
10 COMPETITIVE CLASSIFICATION OF  
11 BUSINESS SERVICES IN SPECIFIED  
12 WIRE CENTERS

JOINT MOTION FOR  
13 CLARIFICATION OR FOR LEAVE TO  
14 FILE REBUTTAL TESTIMONY

15 The Telecommunications Ratepayers Association for Cost-based and Equitable Rates  
16 (“TRACER”), MetroNet Services Corporation (“MetroNet”) and Advanced TelCom Group,  
17 (“ATG”) (collectively “Movants”) file this motion seeking clarification or, in the alternative,  
18 seeking leave to file rebuttal testimony in the above-captioned proceeding. Specifically, Movants  
19 seek clarification that under the current scheduling order in this docket all parties are permitted to  
20 file rebuttal testimony on October 6, 2000. If the current scheduling order contemplates that only  
21 Qwest Corporation, f/k/a U S WEST Communications, Inc., (“Qwest”) will file rebuttal testimony  
22 on October 6, 2000, Movants seek leave to file rebuttal testimony on that date as well. Movants  
23 should be allowed to file rebuttal testimony to respond to positions and recommendations in Staff’s  
24 testimony to the extent they are adverse to the positions and recommendations of the Movants.  
25 In support of this motion, Movants state:

Qwest filed its direct testimony on August 11, 2000. Staff, Public Counsel, and Intervenors

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2 filed their direct testimony on September 18, 2000. The current scheduling order, entered on  
3 August 14, 2000, provides that “Qwest” will file its rebuttal testimony on October 6, 2000.  
4 Movants seek clarification that the scheduling order was not intended to preclude other parties in  
5 this proceeding from filing testimony on October 6, 2000 that is truly in rebuttal to testimony filed  
6 by other parties on September 18, 2000. Specifically, Movants view portions of the Staff’s  
7 testimony as adverse to their positions and wish to file rebuttal testimony in response to Staff’s  
8 testimony.  
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10 If the current scheduling order did not contemplate that parties other than Qwest may file  
11 rebuttal testimony on October 6, 2000, Movants seek leave to file rebuttal testimony on that date.  
12 Staff’s direct testimony contains recommendations that are adverse to Movants’ positions in this  
13 proceeding. These adverse recommendations are based on Staff’s analysis of data that was  
14 produced to Staff by non-party CLECs in response to Staff’s letter of June 22, 2000. Although  
15 Staff did provide the other parties to this docket with aggregated results from the data provided by  
16 non-party CLECs, the raw data itself was not made available for review. TRACER attempted to  
17 serve data requests on Staff in order to critically evaluate the aggregated results which Staff  
18 produced, but pursuant to WAC 480-09-480(5) Staff declined to respond to any data requests until  
19 after it had filed its direct testimony.<sup>1</sup>  
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25 <sup>1</sup> See, WUTC Staff response to TRACER Data Request Nos. 01-01 and 01-02, attached herewith as Exhibit A.

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3 Because Staff declined to respond to data requests until after filing its direct testimony,  
4 Movants were unable to provide testimony offering their own analyses of the evidence on which  
5 Staff relies in taking positions adverse to Movants in this proceeding. Moreover, Staff's ultimate  
6 positions and recommendations were not known until the September 18, 2000 filing. Washington  
7 law provides that, "To the extent necessary for full disclosure of all relevant facts and issues, the  
8 presiding officer shall afford to all parties the opportunity to respond, present evidence and  
9 argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a  
10 limited grant of intervention or by the prehearing order." RCW 34.05.449(2). No limitations were  
11 placed on the interventions granted in this proceeding, and accordingly, Movants respectfully  
12 submit that under Washington law they should be given the opportunity to respond to Staff's  
13 testimony and submit rebuttal evidence.<sup>2</sup> Some portion of Staff's testimony appears adverse to  
14 important interests of the movants. Denial of this motion would effectively deny Movants any  
15 opportunity to present testimony on the adverse positions of Staff, raising significant due process  
16 issues.

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19 Finally, allowing Movants to file rebuttal testimony will further serve the Commission's  
20 interest in having the most full and complete record possible on which to base its decision in the  
21 public interest. There is no harm in permitting parties to offer their own interpretation of data that  
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24 <sup>2</sup> Only once Movants have had the opportunity to serve data requests on Staff and evaluate Staff's responses  
25 will Movants be able to determine their specific positions on the proper interpretation of the data for the record in this proceeding. Additionally, Movants are just beginning to evaluate the extent to which they will or will not oppose Staff's positions and recommendations. Accordingly, it would be premature for the Movants to project specifically how and the extent to which their rebuttal will be adverse to Staff.

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2 is critical to the issues in this docket and responding to the recommendations and positions of  
3 Staff. To the extent any of the Movants were to file testimony that was not truly in the nature of  
4 “rebuttal” to the Staff, the other parties would be able to move to strike such improper testimony.  
5 Moreover, no delay will result by allowing Movants to file rebuttal testimony on the same day  
6 Qwest files its rebuttal testimony. Movants have contacted all the CLECs in this proceeding and  
7 Qwest, and they have no objection to Movants’ motion for leave to file rebuttal testimony. Staff  
8 does intend to object to this motion.  
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10 For the foregoing reasons, Movants respectfully request that the Commission enter an order  
11 clarifying that Movants are permitted to file rebuttal testimony on October 6, 2000 under the  
12 current scheduling order. Alternatively, Movants seek leave to file rebuttal testimony on October  
13 6, 2000 and request that the case schedule be modified accordingly.  
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15 RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of September, 2000.

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